

APPEAL NO. 041266
FILED JUNE 29, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 21, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 10th, 11th, or 12th quarters. The claimant appealed on sufficiency of the evidence grounds, and attached documents to her appeal which were neither offered nor admitted into evidence at the CCH. The respondent (carrier) responded, objecting to the attached documents and otherwise urging affirmance.

DECISION

Affirmed.

The claimant attached several documents to her appeal which were not offered or admitted at the CCH. Documents submitted for the first time on appeal are generally not considered unless they constitute admissible, newly discovered evidence. We conclude that these attachments to the claimant's appeal do not meet the requirements of newly discovered evidence necessary to warrant a remand. Having reviewed the documents, we conclude that their admission on remand would not have resulted in a different decision. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ).

The parties stipulated that the claimant sustained a compensable injury on _____; that she received an impairment rating of 16%; that she did not commute her impairment income benefits; that the qualifying period for the 10th quarter ran from May 15 to August 15 2003; that the qualifying period for the 11th quarter ran from August 15 to November 13, 2003; and that the qualifying period for the 12th quarter ran from November 14, 2003, to February 12, 2004. Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by showing that she had a total inability to work during the relevant qualifying periods. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

The hearing officer did not err in determining that the claimant did not satisfy the good faith requirement of Rule 130.102(d)(4) by demonstrating that she had no ability to work during the relevant qualifying periods. The hearing officer was not persuaded that

the evidence presented by the claimant was sufficient to satisfy the requirements of Rule 130.102(d)(4). Specifically, the hearing officer determined that there was not a narrative that specifically explained how the claimant's injury caused a total inability to work and that other records showed that the claimant had some ability to work in the relevant qualifying periods. Nothing in our review of the record reveals that the hearing officer's determinations in that regard are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb the hearing officer's good faith determination, or the determination that the claimant is not entitled to SIBs for the 10th, 11th, and 12th quarters, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.**

Daniel R. Barry
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Edward Vilano
Appeals Judge